

# SENATE RECORD VOTE ANALYSIS

105th Congress  
2nd Session

Vote No. 208

July 16, 1998, 7:00 p.m.  
Page S-8323 Temp. Record

## AGRICULTURE APPROPRIATIONS/New Taxes for New Anti-Tobacco Spending

**SUBJECT:** Agriculture, Rural Development, and Related Agencies Appropriations Bill for fiscal year 1999 . . . S. 2159.  
Harkin motion to waive the Budget Act for the consideration of the Harkin amendment No. 3193.

### ACTION: MOTION REJECTED, 49-50

**SYNOPSIS:** As reported, S. 2159, the Agriculture, Rural Development, and Related Agencies Appropriations Bill for fiscal year 1999, will provide \$56.813 billion in new budget authority, which is \$7.060 billion more than provided last year. The increase is primarily due to increased Commodity Credit Corporation mandatory payments.

**The Harkin amendment** would add \$100 million to the Food and Drug Administration's youth identification-check anti-smoking program (the bill will fund it at last year's level of \$34 million). Under the FDA's program, retailers are required to check identifications of cigarette purchasers who are younger than 27 years old. Most of the FDA spending is for enforcement of the requirement. Retailers who fail to check identifications are fined up to \$10,000. The remainder of the program funding is used to inform retailers and the public of the requirement to check identifications. The cost of the amendment would be offset by imposing \$150 million in new assessments (taxes) on tobacco companies. The new assessments would be permanent. The Secretary of Health and Human Services would be charged with determining each company's share of the \$150 million in new taxes. The Secretary's determination would be final. It could be appealed in the United States Court of Appeals for the District of Columbia Circuit under the arbitrary and capricious standard.

Debate was limited by unanimous consent. After debate, Senator Domenici raised the point of order that the amendment violated section 302(f) of the Budget Act. Senator Harkin then moved to waive the Budget Act for the consideration of the amendment. Generally, those favoring the motion to waive opposed the amendment; those opposing the motion to waive favored the amendment.

**NOTE:** A three-fifths majority (60) vote is required to waive the Budget Act. After the failure of the motion to waive, the point of order was upheld and the amendment thus fell.

**Those favoring** the motion to waive contended:

(See other side)

YEAS (49)			NAYS (50)			NOT VOTING (1)	
Republicans (9 or 16%)	Democrats (40 or 91%)		Republicans (46 or 84%)	Democrats (4 or 9%)		Republicans (0)	Democrats (1)
Bond	Akaka	Kennedy	Abraham	Hutchinson	Breaux		Glenn <sup>2</sup>
Chafee	Baucus	Kerrey	Allard	Hutchison	Ford		
Collins	Biden	Kerry	Ashcroft	Inhofe	Hollings		
D'Amato	Bingaman	Kohl	Bennett	Jeffords	Moynihan		
DeWine	Boxer	Landrieu	Brownback	Kempthorne			
McCain	Bryan	Lautenberg	Burns	Kyl			
Smith, Gordon	Bumpers	Leahy	Campbell	Lott			
Snowe	Byrd	Levin	Coats	Lugar			
Specter	Cleland	Lieberman	Cochran	Mack			
	Conrad	Mikulski	Coverdell	McConnell			
	Daschle	Moseley-Braun	Craig	Murkowski			
	Dodd	Murray	Domenici	Nickles			
	Dorgan	Reed	Enzi	Roberts			
	Durbin	Reid	Faircloth	Roth			
	Feingold	Robb	Frist	Santorum			
	Feinstein	Rockefeller	Gorton	Sessions			
	Graham	Sarbanes	Gramm	Shelby			
	Harkin	Torricelli	Grams	Smith, Bob			
	Inouye	Wellstone	Grassley	Stevens			
	Johnson	Wyden	Gregg	Thomas			
			Hagel	Thompson			
			Hatch	Thurmond			
			Helms	Warner			

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Last year Members overwhelmingly supported initial funding for the FDA's program to make retailers check the identifications of cigarette purchasers who appeared to be under the age of 27. This program is necessary because most adults who smoke started smoking when they were underage, and most underage smokers have no problem whatsoever in purchasing tobacco from retailers. With a death toll of more than 400,000 per year, smoking is both a deadly and costly habit. This bill will continue to fund the program at last year's level of \$34 million. That funding level is enough to pay for 200,000 compliance checks. That may sound like a lot, but it is only enough to cover one-fifth of the Nation's tobacco retailers. Therefore, we have proposed the Harkin amendment to increase funding by \$100 million. That increase would fully fund the program, making it possible to conduct compliance checks against 60 percent of the Nation's tobacco retailers. To pay for this increased funding, the amendment would require the Secretary of Health and Human Services to assess tobacco companies \$150 million per year. The assessments would have to be higher than the actual funding that would be given because of the interaction those new assessments would have with existing taxes (the assessments would lower existing tobacco tax collections). We think that it is fair to make the tobacco companies pay in this extra money, considering that roughly \$500 million worth of cigarettes were sold illegally to kids last year, and considering that the tobacco companies spend \$5 billion per year on advertising, much of which is aimed at youth. This amendment would not reopen the tobacco debate, though we still strongly support passage of a huge tobacco bill. Instead, all it would do is increase funding for one small program which the Senate is already on record as favoring. We urge our colleagues to waive the Budget Act for the consideration of this very reasonable amendment.

**Those opposing** the motion to waive contended:

Many of us object to this amendment because we object to the very existence of this FDA program; others of us object to it because the funding source is extremely objectionable. Together, we are confident that enough of us oppose this amendment that we can defeat the Harkin motion to waive the Budget Act. On the substance of the program, many of us do not like the FDA getting involved in a State law enforcement issue. Every State already has its own laws making the underage purchase of cigarettes illegal, and the Federal Government already requires each State to have enforcement efforts for those laws as a condition of receiving Substance Abuse and Mental Health Services Administration (SAMSHA) grants, which total \$1 billion yearly. That approach is much better than the approach taken by the FDA program, which is to enact a Federal requirement and then offer States funding to enforce it. Our colleagues' assumption is that the Federal enforcement approach of sting operations with \$10,000 fines against retailers is automatically better than all of the approaches taken by each of the 50 States. We do not make that assumption. Those of us who object to the funding source find it objectionable for four reasons. First, it would put the Department of Health and Human Services in charge of determining how much particular companies should pay in taxes. Congress has the authority to impose taxes, not the Executive Branch. Congress should not farm out its constitutional power of the purse, its greatest power, so cavalierly. Second, and even worse, it would allow the Secretary of Health and Human Services to conduct a survey to decide how large each company's tax burden should be. Surveys, or polls, are inherently subject to political manipulation. Third, it would hurt tobacco farmers, most of whom have very small farms and who are low-income Americans. In any other debate on an agricultural product, our colleagues would be quick to tell us that farmers are price takers, meaning they pretty much have to take whatever price is offered them for their product. If the tobacco companies' costs go up by \$150 million, they will just pass them on to farmers by lowering the amount they will pay for tobacco. The Harkin amendment would not tax tobacco companies--it would tax tobacco farmers. Fourth, and finally, the amendment would increase spending above the committee's allocation. We will not agree to greater spending. If our colleagues wish to fund this program, they should propose cutting other spending rather than increasing taxes. The point of order that lies against this amendment is that it exceeds the allowable amount of spending for this bill. That point of order is unquestionably correct. Supporters of this amendment want us to waive it so that they can increase spending. We will not support them in that effort.